

REMARKS

[0003] Applicant respectfully requests entry of the following remarks and reconsideration of the subject application. Applicant respectfully requests entry of the amendments herein. The remarks and amendments should be entered under 37 CFR. § 1.116 as they place the application in better form for appeal, or for resolution on the merits.

[0004] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-37 are presently pending. Claims amended herein are: 1, 25, 29 and 34. Claims withdrawn or cancelled herein are: None. New claims added herein are: None.

Formal Request for an Interview

[0005] If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can discuss this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0006] Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for me, I welcome your call to either as well. My contact information may be found on the last page of this response.

Allowable Subject Matter

[0007] Applicant would like to thank the Examiner for allowing claims 8-24. These claims have not been amended herein, and therefore remain allowable.

Claim Amendments

[0008] Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claims 1, 25, 29 and 34 herein. Applicant amends claims to clarify claimed features such that they better reflect their consistency with the previously allowed claims. Such amendments are made to expedite prosecution and to more quickly identify allowable subject matter. Such amendments are merely intended to clarify the claimed features, and should not be construed as further limiting the claimed invention in response to the cited reference.

Substantive Matters

Claim Rejections under § 102

[0009] The Examiner rejects claims 1-7 and 29-37 under § 102. For the reasons set forth below, the Examiner has not shown that the cited references anticipate the rejected claims.

[0010] In addition, the Examiner rejects claims 25-28 under § 103. For the reasons set forth below, the Examiner has not made a prima facie case showing that the rejected claims are obvious.

[0011] Accordingly, Applicant respectfully requests that the § 102 and § 103 rejections be withdrawn and the case be passed along to issuance.

[0012] The Examiner's rejections are based upon the following reference:

- **Takenaka:** *Takenaka, et al.*, US Patent No. 6,807,450 (issued October 19, 2004).

Overview of the Application

[0013] The Application describes a technology for analyzing data packets of an audio file, determining effective start and stop locations for the audio file, and playing the audio file based on the determined start and stop locations.

Cited References

[0014] The Examiner cites Takenaka as the only reference in the anticipation- and obviousness-based rejections.

Takenaka

[0015] Takenaka describes a technology for removing a predetermined amount of data from the beginning and end of an audio file directly prior to output.

Anticipation Rejections

[0016] Applicant submits that the anticipation rejections are not valid because, for each rejected claim, no single reference discloses each and every element of that rejected claim.¹ Furthermore, the elements disclosed in the single reference are not arranged in the manner recited by each rejected claim.²

Based upon Takenaka

[0017] The Examiner rejects claims 1-7 and 29-37 under 35 U.S.C. § 102(e) as being anticipated by Takenaka. Applicant respectfully traverses this rejection. Based on the reasons given below, Applicant asks the Examiner to withdraw the rejection of these claims.

¹ "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); also see MPEP §2131.

² See *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Independent Claims 1, 25, 29 and 34

[0018] Applicant submits that Takenaka does not anticipate these claims because it does not show or disclose the following element as recited in claim 1 and similarly recited in claims 25, 29 and 34 (with emphasis added):

progressively analyzing consecutive data samples of the first audio file to **determine a data sample wherein a threshold is reached** to identify a first effective start position[[,]] and a fade-out position associated with the first audio file;

[0019] Takenaka explicitly states that the effective start (and end) positions are “calculated on the basis of the start address and the end address of each compressed information piece” (Takenaka col. 10 ll. 20-25). Applicant submits that calculating a position based upon only the input of a memory address implies a static algorithm that is used to determine how far from the start or end of the information piece to locate the effective start or end position. Calculating based upon a reference point is not equivalent to analysis of individual data samples. Therefore, Takenaka does not disclose analyzing data samples of the first audio file to identify a first effective start position.

[0020] Whereas, the current independent claims of the instant application recite that data samples of the audio file are analyzed to identify a first effective start position and a fade-out position associated with the first audio file,

Takenaka does not disclose all of the elements and features of these claims. Accordingly, Applicant asks the Examiner to withdraw the rejection of these claims.

Dependent Claims 2-7, 26-28, 30-33 and 35-37

[0021] These claims ultimately depend upon independent claims 1, 29 or 34. As discussed above, claims 1, 29 or 34 are allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Obviousness Rejections

Lack of Prima Facie Case of Obviousness (MPEP § 2142)

[0022] Applicant disagrees with the Examiner's obviousness rejections. Arguments presented herein point to various aspects of the record to demonstrate that all of the criteria set forth for making a prima facie case have not been met.

Based upon Takenaka

[0023] The Examiner rejects claims 25-28 under 35 U.S.C. § 103(a) as being unpatentable over Takenaka. Applicant respectfully traverses the rejection of these claims and asks the Examiner to withdraw the rejection of these claims.

Independent Claim 25

[0024] Applicant submits that the combination of Takenaka and Official notice by the Examiner does not render this claim obvious because it does not teach the following elements as recited in this claim (with emphasis added):

a cross-fade parameter calculator to **progressively analyze consecutive data samples** of the first audio file to **determine a data sample wherein a threshold is reached**

and calculate at least one fade-out parameter associated with the audio file;

[0025] As discussed above regarding the 102 anticipation rejections, Takenaka does not describe analyzing data samples of an audio file. Furthermore, Takenaka does not teach or suggest such analyzing. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 26-28

[0026] These claims ultimately depend upon independent claim 25. As discussed above, claim 25 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Conclusion

[0027] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action.** Please call or email me or my assistant at your convenience.

Respectfully Submitted,

Lee & Hayes, PLLC
Representatives for Applicant

/Clay D. Hagler/

Dated: 09/02/2008

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